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No. 83-716

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

CAROLE JUNE CATON, Petitioner

v.

PAUL WILLIAM CATON, Respondent

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF OKLAHOMA

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

1. Respondent makes repeated emotive appeals for this court to preserve the "close ties of filiation which have extended now over a period of some five years" (Br. in Opp. p. 18). This court should be informed that petitioner is proceeding against respondent in District Court because of respondent's sexual abuse of the minor child during court ordered visitation. Clinical social worker C. P. Gagliano, ACSW, reported "It is my professional opinion that Adrianna experienced sexually abusive acts upon her person by Paul Caton.'''I do not recommend that this four-year old child be permitted to

experience further trauma and fears apparently perpetrated and aroused by Paul. It is also my recommendation that visitation with Mr. Paul Caton be terminated." (Petitioner's Exhibit A). Clinical psychologist Dr. Paul J. Schwartz, Ph.D., reported "'''continuation of this visitation suggests the child is at continued risk for sexual abuse as defined and discussed in the previous section." (Petitioner's Exhibit B).

Petitioner respectfully asks this court to examine Petitioner's Exhibits A, B, and C.

2. Petitioner has never accepted the $100/month court ordered child support. She has petitioned the Tulsa District Court to revoke the support order. She has no "interest in continuing these payments" (Br. in Opp. p. 37).

3. Some, perhaps many, married men have fathered children by women other than their wives. Does a woman have the right to expect that a child born to her husband will be hers even if another woman is the biological parent? Respondent states that "A man, after all, has a perfect right to expect that the child born

to his wife will be his own." (Br. in Opp. p. 38). Petitioner suggests that a spouse does not have the right to expect that a child born to their spouse and a biological parent outside the marriage will be their own.

4. Respondent claims petitioner has no standing to demand that respondent be punished, since she has no private stake in respondent's incarceration (Br. in Opp. p. 42). Petitioner has never demanded that respondent be incarcerated for his contempt. Petitioner would prefer that respondent either be adjudicated not the father of her minor child, or that he willingly comply with the court order requiring blood tests.

5. An attorney was appointed to represent the child, but he acted only temporarily at the District Court.

Petitioner was not required by Rule 28.4 (c) to serve her petition on the Attorney General of Oklahoma, because she is not claiming that an Oklahoma statute is unconstitutional.

She claims that Oklahoma statutes were applied in such a way as to violate her rights granted by the United States Constitution.

6. Respondent's claim that this case is of "purely scholarly interest beyond benefiting the litigants" (Br. in Opp. p. 23) is incorrect. The circumstances are not unique or even rare. Dr. Jeffrey W. Morris, M.D., Ph.D., of the Memorial Medical Center of Long Beach, estimates that one percent of the 3,000 paternity cases tested in his laboratory involved a wife alleging that her husband was not the father of her child (Petitioner's Exhibit D). The annual caseload of all paternity blood tests is now 40,000 according to Dr. Morris. This translates into 400 cases per year with circumstances very similar to this case. Dr. Morris estimates that an additional four percent of his cases involve the husband claiming nonpaternity of a child born to his wife.

The question of whether blood tests should be mandatory upon the parties involved is far from academic. Many lower courts have

ruled that the trial court must order blood tests, for example State vs. Meacham, 93 Wash, 2d 738, 612 P. 2d 795 (1980). The Oklahoma Supreme Court in State ex rel. Evertson vs. Cornett (391 P. 2d 277 (Okla. 1964)) ruled that the trial court must order blood tests, because they offered the defendant his only chance to prove nonpaternity. The rulings to date have required trial courts to order tests, to which the parties have almost invariably submitted. If parties become aware that they may refuse court-ordered blood tests without penalty, as Mr. Caton did, parentage laws of many states will become ineffective. The United States Supreme Court has said that proof of paternity "is often sketchy and strongly contested, frequently turning upon conflicting testimony from only two witnesses" (Mills v. Habluetzel, 102 S. Ct. 1549 (1982)). This Court should see that paternity is determined by biological facts and not conflicting testimony, by not allowing contempt such as that shown by Mr. Caton.

7. On Oct. 24, 1983, respondent filed a motion with the Tulsa District Court, asking that absolute custody of the child be transferred to respondent or a "third party". Then, on November 25, 1983, respondent stated that "No loss of custody by the mother or of contact with the stepfather is, of course, at issue" (Br. in Opp. pp. 20,21). Petitioner respectfully submits that this statement to the United States Supreme Court is at best falsity and at worst perjury.

In this questionable statement, the word "stepfather" refers to the present husband of the petitioner, who has stated under oath that he is the child's natural father.

8. Respondent claims that petitioner has not raised federal questions in the Oklahoma Courts. Petitioner claimed equal protection of the laws in her petition for certiorari to the Oklahoma Supreme Court, a petition which was denied by a six to three majority.

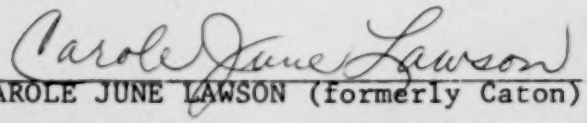
Petitioner's entire course of proceedings beyond the District Court has been a quest for

due process. Whether explicit or implicit, the due process question has been continually before the higher state courts.

CONCLUSION

For reasons given above and in the petition, petitioner respectfully submits that the petition for writ of certiorari should be granted.

Respectfully submitted,



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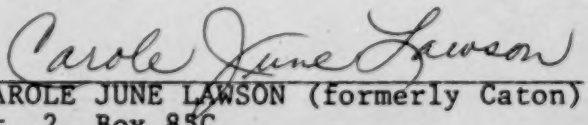

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